

STATE OF MICHIGAN
IN THE SUPREME COURT

MEEMIC INSURANCE COMPANY,

Supreme Court No. 158302

Plaintiff/Counter-Defendant/Appellant,

Court of Appeals No. 337728

v

Berrien County Circuit Court
No. 14-260-CK

LOUISE M. FORTSON, RICHARD A. FORTSON,
Individually, and RICHARD A. FORTSON, as
Conservator for JUSTIN FORTSON,

Defendants/Counter-Plaintiffs/Appellees.

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I. MICHIGAN LAW DOES NOT RECOGNIZE THE INNOCENT THIRD-PARTY RULE IN ANY CIRCUMSTANCE. THEREFORE, THE INNOCENT THIRD-PARTY RULE DOES NOT EXEMPT JUSTIN FROM THE EFFECT OF THE "CONCEALMENT OR FRAUD" PROVISION OF THE POLICY UNDER WHICH HE CLAIMS BENEFITS.

Unfortunately, Defendants have chosen not to follow MEEMIC's organizational format.

MEEMIC will address Defendants' arguments using its original format.

A. THERE IS NO MICHIGAN AUTHORITY SUPPORTING AN INNOCENT THIRD-PARTY RULE IN ANY CIRCUMSTANCE. (Response, Argument II., p 12-14).

The point of MEEMIC's discussion of this issue was that regardless whether this Court's decision in *Bazzi* is distinguishable, there is no innocent third-party rule in Michigan. Defendants only argument is that *Bazzi* is distinguishable. But distinguishing *Bazzi* does not create such a rule where it does not otherwise exist.

Defendants do not even address that issue. Nor do they proffer any authority establishing such a rule. Accordingly, MEEMIC's analysis stands unanswered.

B. MEEMIC IS NOT SEEKING EQUITABLE RELIEF. (Response, Argument III., p 15).

In its discussion of this issue, MEEMIC demonstrated that it is not seeking equitable relief in the instant case; it seeks to enforce an unambiguous contractual provision entitling it to void the policy.

MEEMIC cited extensive authority in support of its position.

In their Response, Defendants failed to acknowledge, much less address, the case law from this Court and from the Court of Appeals articulating the distinction between seeking equitable relief and seeking to enforce unambiguous contract language:

"The crux of Thomas's argument is that the trial court erred in granting summary disposition in Secura's favor without addressing each element of actionable fraud . . . and

where there existed genuine issues of material fact on those elements. **We need not consider this argument, however, because it is clear that rescission was justified pursuant to the terms of the policy itself, without regard to the elements of actionable fraud. . . . This provision is clear and unambiguous: Secura was entitled to void the policy if an insured, at any time, made false statements relating to the policy.**"

Secura Ins v Thomas, unpublished per curiam opinion of the Court of Appeals, rel'd 12/1/15 (No. 322240) (Appendix Q), p 3 (emphasis added).

Defendants argue that because "in effect MEEMIC is seeking to rescind the policy", its legal contract defense is transmuted into an equitable one. Defendants cite this Court's decision in *Bazzi v Sentinel Ins Co*, ___ Mich ___, ___ NW2d ___ (2018)¹, in support of their argument. That case provides no such support.

Bazzi addressed the viability of **traditional common-law defenses** where there is fraud in the procurement of a policy. This Court's opinion is rife with references to **common-law** defenses and "**traditional**" remedies. *Bazzi*, p 5 (four times), p 6, 7 (twice), p 8 (twice). It is in that context that this Court's discussion of an equitable remedy must be understood.

Neither *Bazzi* nor *Titan Ins Co v Hyten*, 491 Mich 547; 817 NW2d 562 (2012), refer to a **contractual** right to rescind, such as the one in *Cohen v ACIA*, 463 Mich 525; 620 NW2d 840 (2001), or the other cases cited by MEEMIC in its Application. Therefore, neither case is applicable here.

¹Neither the Michigan Reports nor the Northwest Second citations are available. Accordingly, references to this Court's opinion in *Bazzi* will be to the slip opinion issued by this Court.

II. MICHIGAN LAW DOES NOT EXEMPT SPOUSES AND RESIDENT RELATIVES FROM THE UNAMBIGUOUS TERMS OF THE POLICY UNDER WHICH THEY ARE CLAIMING BENEFITS. (No Response).

Defendants do not even attempt to defend the majority's convoluted argument that the anti-fraud provision is invalid as contrary to MCL 500.3114(1). Nor do Defendants attempt to defend the necessary consequence of that argument: Under Michigan law, the only person bound by a policy's anti-fraud provision would be the named insured.

Defendants' inability to muster even a token defense of that aspect of the majority's opinion speaks volumes as to its essential irrationality.

III. THE CANCELLATION OF A SUBSEQUENT RENEWAL POLICY DID NOT ALTER THE PARENTS' STATUS AS NAMED INSUREDS SUBJECT TO THE ANTI-FRAUD PROVISION OF THE POLICY UNDER WHICH RECOVERY IS SOUGHT IN THE INSTANT CASE. (Response, Argument I., p 7-11).

In its Application, MEEMIC presented three independent and alternative reasons for rejecting the majority's argument that JUSTIN's parents were not insureds for purposes of the anti-fraud provision of the policy.

A. THE TERMS AND CONDITIONS OF AN OCCURRENCE POLICY CANNOT BE ALTERED BY A POST-OCCURRENCE CANCELLATION. THEREFORE, THE PARENTS' STATUS AS NAMED INSUREDS SURVIVED CANCELLATION OF THE POLICY. (No Response).

Defendants' entire substantive argument consists of nothing more than restating their position. (Response, p 9-10). They do not attempt to explain why that position is not directly contrary to the nature of an "occurrence" policy, which fixes the rights and obligations of the parties at the time of the event triggering liability.

B. THE CANCELLATION OF A SUBSEQUENT RENEWAL POLICY HAD NO EFFECT ON A PREVIOUS POLICY. (No Response).

Nor do Defendants attempt to explain how cancelling a subsequent policy can have any effect on a claim made under a prior policy.

C. EVEN IF THE MAJORITY'S ANALYSIS WAS OTHERWISE CORRECT, JUSTIN'S PARENTS WERE CLAIMANTS OF BENEFITS UNDER THE POLICY, WHOSE CLAIMS ORIGINATED PRIOR TO THE DATE OF CANCELLATION. THEREFORE, UNDER THE MAJORITY'S REASONING, THEIR STATUS AS INSUREDS WAS UNAFFECTED, AND THEY REMAINED SUBJECT TO THE ANTI-FRAUD CONDITION. (No Response).

Here, again, Defendants do not even acknowledge, much less defend, the inconsistency in the majority's holding that JUSTIN was the only claimant.

In sum, Defendants' discussion of this issue consists of nothing more than reciting principles of contract interpretation, followed by a simple restatement of their position. They do not address any of the three independent and alternative bases for rejecting the majority's argument. This argument stands essentially unanswered.

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